

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

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No. 142

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HUGH PIERRE.

STATE OF LOUISIANA.

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PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF LOUISIANA  
AND BRIEF IN SUPPORT THEREOF.

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*Petitioner,*

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**PETITION FOR WRIT OF CERTIORARI.**

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*To the Supreme Court of the United States:*

Your petitioner, Hugh Pierre, respectfully alleges:

A.

**Summary Statement of the Matter Involved.**

Petitioner, a member of the colored race, is now confined in the Parish Prison in the City of New Orleans, State of Louisiana, under sentence of death for the alleged crime of murder. He was convicted at a trial held in St. John the Baptist Parish, Louisiana, before the Honorable Robert L. Rivard and a jury. An appeal was taken from that conviction and sentence to the Supreme Court of Louisiana, which is the highest Court of the State of Louisiana. The conviction and sentence was affirmed by that Court on Monday, March 7, 1938. A timely application for a rehearing was

made on March 18, 1938, which application was received and considered by the Court. The application for a rehearing was denied on April 4, 1938.

Before trial petitioner duly filed a motion to quash the indictment against him on the ground and for the reason that the Grand Jury which returned the indictment in St. John the Baptist Parish had been drawn from jury rolls and had been selected in such a manner, in that negroes had been excluded therefrom and discriminated against, because of their race and color. Petitioner also moved to quash the general venire and panel from which the grand jury, which returned the indictment against him, and from which the petit jury panel was drawn, on the ground and reason that negroes had been illegally and unlawfully excluded from the venire and grand jury and petit jury panels on account of their race and color, in violation of defendant's constitutional rights guaranteed him under the Constitution of the State of Louisiana and of the 14th Amendment of the Constitution of the United States. The motion to quash was entertained, and the evidence introduced in support thereof established such discrimination; the Court, after hearing the evidence in support thereof, quashed the petit jury panel and venire, but refused to quash the indictment and grand jury venire and panel, although the petit jury panel and venire was a part of the grand jury general venire.

## B.

### **Reasons Relied on for the Allowance of the Writ.**

1. Petitioner was denied the equal protection of the laws guaranteed him by the 14th Amendment of the Constitution of the United States, in that negroes were excluded from the venire and panel and from jury service in St. John the Baptist Parish, Louisiana, in which parish was found the indictment against him, and that such exclusion was by reason of their race and color.

2. A motion to quash was made by your petitioner before trial to quash the indictment on these grounds. The motion was heard, and the evidence introduced in support thereof established such discrimination, the trial judge quashing half of the venire which made up the petit jury panel, holding that defendant was discriminated against, and that negroes were excluded from the general venire on account of their race and color, but refusing to quash the indictment and that part of the general venire which composed the grand jury, which returned the indictment against petitioner, for the reason as given by the Court that an indictment was simply a formal method of charging a person and, therefore, did no harm to the defendant. The claim of Federal right was considered both by the trial court and by the Supreme Court of the State.

3. Your petitioner was on numerous occasions, both with reference to the motion to quash the indictment, and with reference to motions to quash the venire, and in the refusing to maintain the motion in arrest of judgment, illegally discriminated against, illegally indicted by an illegally constituted grand jury and was denied the equal protection of the laws, as guaranteed him under the 14th Amendment of the Constitution of the United States, both by the trial court's judgment, and the Supreme Court of Louisiana's judgment in refusing to follow the decision of this Court, as laid out in the case of *Norris v. State of Alabama*, 294 U. S. 587, L. Ed. 1074, 55 S. Ct. 579.

In support of the foregoing grounds of application, your petitioner submits the accompanying brief setting forth in detail the precise facts and arguments applicable thereto.

WHEREFORE your petitioner prays that this Court, pursuant to United States Judicial Code, Section 237 B, as amended by Act of February 13, 1925, 43 Statutes 937, and

also Act of March 8, 1934, issue a writ of certiorari to review the judgment of the Supreme Court of Louisiana for the conviction for murder as aforesaid. All of which is herewith respectfully submitted this 15th day of June, 1938.

MAURICE R. WOULFE,  
*Attorney for Petitioner.*

UNITED STATES OF AMERICA,  
*State of Louisiana,*  
*Parish of Orleans:*

Personally came and appeared, before me, the undersigned authority, Hugh Pierre, who being duly sworn, deposes and says: That he is the petitioner named in the above and foregoing petition for writ of certiorari; that he has read same; and that all the facts and allegations herein contained are true and correct.

HUGH PIERRE,  
*Petitioner.*

Sworn to and subscribed before me this 15th day of June, 1938.

[SEAL.]

THEODORE H. MCGIEHAN,  
*Notary Public.*



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**BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI.**

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**Statement of the Case.**

Petitioner and defendant, Hugh Pierre, was charged in bill of indictment for murder. Was tried and convicted before the Hon. Robert L. Rivarde, Judge of the 24th Judicial District Court, Parish of St. John the Baptist, Louisiana, and was sentenced to be "hanged by the neck until dead". From this conviction and sentence he appealed to the Supreme Court of Louisiana, which Court affirmed the verdict and sentence of the trial court, and from which final judgment and decree of the Supreme Court of Louisiana, petitioner now seeks relief through the writ of certiorari to this Honorable Court. Petitioner is a negro and was charged with murdering one Ignace Roussel, a white man. The indictment was returned into court on January 18, 1937. Before trial, he filed a motion to quash the indict-

ment and the general venire and grand jury panel and petit jury panel, on the ground and for the reason that negroes and persons of color were deliberately and systematically excluded therefrom, on account of their race and color in violation of the 14th Amendment of the Constitution of the United States (R. 2-3).

After hearing evidence upon said motion to quash, the Court handed down its judgment on January 27, 1937, maintaining in part the motion to quash filed on behalf of petitioner and defendant, ordering the petit jury venire and panel (which was part of the general venire) quashed and set aside, assigning his reasons for so doing, that the evidence showed discrimination against negroes, in violation of the 14th Amendment of the Constitution of the United States, but refused to quash the indictment and the grand jury venire and panel, which returned said indictment, and which formed part of the venire (which the Court ordered quashed and set aside) giving as his reasons for his refusal to quash the indictment and grand jury venire, that an indictment was simply a formal method of charging a person, and, therefore, no injury could be assigned by one, account of an illegal indictment (R. 4-5).

A bill of exception was properly reserved to the refusal of the trial court to grant the motion to quash the indictment and the grand jury venire. A motion for change of venue was filed and overruled, as petitioner was unable to offer sufficient evidence upon said motion for change of venue, although the public feeling was such against him that he was unable to receive a fair trial in said parish, or to secure a fair and impartial jury therein, and it was necessary for the authorities to confine him from the day of his arrest in custody of the criminal sheriff for the Parish of Orleans at the Parish Prison in New Orleans, for safekeeping. He was tried on July 19, 1937, and convicted on July 20, 1937. On July 29, 1937, he filed his motion for new trial

(Certified transcript p. 25) which was overruled, and exception reserved. A motion in arrest of judgment was filed and overruled; then petitioner filed his appeal to the Supreme Court of Louisiana. On Monday, March 7, 1938, having passed upon the Federal question and Federal right raised on behalf of petitioner, the Supreme Court affirmed the judgment to the lower court, the Chief Justice of the Supreme Court of Louisiana dissenting and handing down a separate dissenting opinion (R. 67-75, inclusive). A petition for rehearing was duly filed and considered (R. 75-80, inclusive). The Court refused the petition for rehearing filed on behalf of petitioner and defendant on April 4, 1938. He immediately on that day applied to the Chief Justice of the Supreme Court of Louisiana for a stay of execution and delay to apply for writs of certiorari, review, or Appeal to the Supreme Court of the United States (R. 80-82, inclusive).

The facts of this case, as disclosed by this record attached to the motion for new trial, are these: Hugh Pierce, a crippled negro, residing with his mother and family at Lucy, Louisiana, in the Parish of St. John the Baptist, Louisiana, was engaged in working on a truck in the rear yard of his farm on the afternoon of the 20th day of October, 1936, when a white man by the name of Leopold Ory came into Pierre's yard and accused him of stealing a plow six years before that, which he claimed to have been left behind the levee of the Mississippi River. Upon Pierre's denial of the accusation, Ory struck him and knocked him down, and during the argument, defendant struck Ory with a piece of stick he had in his hand, after which Ory, on leaving the yard, threatened Pierre that he would return later on and get him. Later on that night two of Ory's sons, Michael Ory and Alfred Ory, together with another and the deceased, Ignace Roussel, who was a constable, returned to Pierre's home. The deceased, according to the testimony,

drawing a gun, threatened and struck petitioner with a night stick, while his companions surrounded the house, telling petitioner that he was going "to take him with him". Upon being asked if he had a warrant for his arrest, deceased refused to show same, stating he did not need any warrant to arrest the accused; or words to that effect (Certified transcript p. 194). Petitioner, fearing for his life, and that great bodily harm was to come to him, tried to escape out the back way and found that his escape was blocked by the companions of the deceased, and fearing for his life when the deceased broke open the front door with his gun in hand, petitioner fired one shot in the direction of the front door, killing the deceased. After the shot, he escaped into St. Charles Parish, where he was arrested by parish officers, and immediately conveyed by them for safekeeping to the parish prison in the City of New Orleans, where he is still being held, pending this appeal. We believe that the entire evidence and circumstances of this case are that the arrest, if arrest it can be called, was unlawful, and that petitioner and defendant simply defended his life and took the life of the deceased in self-defense; that this country jury in less than five minutes returned a verdict of "Guilty, as Charged" (Motion for New Trial, certified transcript p. 25). We respectfully submit that had this been the case of a white man killing another white man under like circumstances as brought out in this case, this defendant would have been promptly acquitted, or probably never prosecuted. The evidence showed that Pierre and his family were respected, law-abiding and industrious negroes who had resided all their lives in the Parish of St. John the Baptist, Louisiana, who worked for themselves and bore the respect of all in the community; that the defendant himself was a hopeless cripple in arm and leg, and an inoffensive negro who had never been in any trouble before in his life. The evidence offered on the motion to quash is contained in (R. 22-56, inclusive),

together with the list of jurors on the venire which returned the indictment herein.

### **Specification of Errors.**

(1) That the trial court erred in refusing the motion to quash the indictment and grand jury panel, from which the grand jury that found the indictment was drawn, as such ruling and judgment, that although negroes were excluded from the list of jurors drawn, on account of their race and color; an indictment was a mere presentment and formal method of charging an accused, and no injury could be sustained by the return of an illegal indictment, such as in this case, was in direct conflict with the ruling of this Court in the case of *Carter v. Texas*, 177 U. S. 442, 447, 44 L. Ed. 839, 841, and the case of *Norris v. Alabama*, 294 U. S. 587, 79 L. Ed. 1074.

(2) That the Supreme Court of Louisiana in affirming the judgment of the trial court, erred in its judgment in requiring petitioner to a rule and degree of proof, of discrimination and exclusion, contrary to that held in the decision of this Honorable Court handed down in the case of *Norris v. Alabama*, 294 U. S. 587. The degree of proof necessary under the ruling of this Honorable Court in the above case was that it was incumbent upon petitioner to make a *prima facie* showing of discrimination and exclusion, and not by a preponderance of the evidence, as stated in the Supreme Court of Louisiana's decision. Further, the finding of fact by the Supreme Court of Louisiana was clearly erroneous and not sustained in fact by the proof offered on the motion to quash.

(3) That both the rulings of the trial court and the Supreme Court of Louisiana in sustaining the indictment and grand jury venire, were a direct denial of petitioner's rights of the equal protection of the laws, as guaranteed him under

the 14th Amendment of the Constitution of the United States.

### **Argument.**

The trial court, after hearing the evidence on the motion to quash (R. 22-56, inclusive), together with judicial knowledge of the listed persons on the venire of the jury that returned the indictment against petitioner, and its judicial knowledge of the fact that at no time during its incumbency upon the bench had a negro, a person of color, ever been selected for jury service in St. John the Baptist Parish; in addition to that, the Court's knowledge of the tremendous handicap that petitioner labored under to draw out from the witnesses the proof and evidence of exclusion and discrimination, and the Court's actual determination of that question of fact, that there was discrimination, and that negroes were excluded on account of their race and color, we respectfully submit was conclusive on the Supreme Court of Louisiana. The trial court was in error in deciding that an indictment was a mere presentment, and not evidence of guilt, and that no harm could be assigned, or constitutional right violated by the return and finding of an illegal indictment. This ruling of the trial court was in direct conflict with the decisions of this Court, in the cases of *Carter v. Texas*, 177 U. S. 442, 447, 44 L. Ed. 839, 841, and *Norris v. Alabama*, 294 U. S. 587, 79 L. Ed. 1074, and *Hale v. Kentucky*, 303 U. S. 613, Supreme Court Advanced Opinions, Vol. 82 #14, Pg. 744. The Supreme Court of Louisiana's decision was erroneous, although admitting the constitutional rights involved, and although acknowledging the decision of this Honorable Court in the case of *Norris v. Alabama*, above referred to, the grounds upon which the Supreme Court of Louisiana ruled on, and were the same grounds upon which the Supreme Court of Alabama denied the constitutional rights of the defendant and was merely

an indirect method and way to circumvent the decisions of this Honorable Court, in the case of *Norris v. Alabama*, 294 U. S. 587, 79 L. Ed. 1074, and the case of *Carter v. Texas*, 177 U. S. 442 (see decision of this matter in *State v. Pierre*, Vol. 180, So. Rep. No. 4, May 26, 1938, Pg. 630).

In the petition for rehearing before the Supreme Court of Louisiana (R. 75-80, inclusive) we clearly briefed the decisions of the Supreme Court of Louisiana on the question of a negro's right of representation on juries down to the last case decided by that court, and it is a significant fact that the Supreme Court of Louisiana has without exception avoided and nullified this Honorable Court's decisions on this question herein involved, in every case coming before it. We respectfully submit that a strong *prima facie* case of discrimination and exclusion of negroes from juries in St. John the Baptist Parish, Louisiana, was met by the proof and evidence offered in conformity to the ruling of this Honorable Court, in the case of *Norris v. Alabama*, 294 U. S. 587, 79 L. Ed. 1074, and that the rulings of both the trial court and the Supreme Court of Louisiana are erroneous and in direct conflict with this Court's rulings in the above cases cited, and should be set aside, and that the writ of certiorari should issue herein, as prayed for, and according to law, and for all other relief as may be necessary.

Respectfully submitted,

MAURICE R. WOULFE,  
*Attorney for Petitioner.*